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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,725	08/04/2003	Lucky W. Besecker	BRB-10002/02	5605

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EXAMINER

BASINGER, SHERMAN D

ART UNIT PAPER NUMBER

3617

DATE MAILED: 10/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/633,725

Applicant(s)

BESECKER ET AL.

Examiner

Sherman D. Basinger

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-5 and 7-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-5 and 7-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Objections

1. Claims 1, 4, 5, 8 and 10 are objected to because of the following informalities:
see below. Appropriate correction is required.

In claim 1, line 9 "said pair of flange portions" has no clear antecedent.

In claim 4, last two lines, "said moveable member" should be "said mounting structure".

In claim 8, last line "cylinder" should be "actuator".

In claims 5 and 10 "said guide means" should be amended to define the second pair of guide means.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 3-5 and 7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmid, Jr., newly cited, in view of Stone and Stanescu, newly cited.

The swim platform for attachment to the transom of a boat is shown in figure 1 of Schmid, Jr. See column 4, lines 35-40 of Schmid, Jr.

In Schmid, Jr. the moveable member is 14, the horizontal platform is 16, the side structures are 28, the guide means of the mounting structure is 44, the channel members are 50, the flange portions are 52, the inner channel members of the structures 28 face each other, the inner flanges of the structures 44 face away from

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each other, the forward wall is 38, the transverse wall of the mounting structure is the back wall of structure 44, the forward wall 38 and the transverse wall of structure 44 house in one area actuator 56, the steps are 64 and the hand gripping surfaces of the second pair of guide means are legs 34.

In claim 1 "for attachment to a transom of a boat" and "adapted to be fixed to the transom of a boat" are intended uses of the swim lift. So long as the swim lift of Schmid, Jr. can perform such uses and has the claimed structure or can be modified to have the claimed structure, it is the claimed swim platform.

Schmid, Jr. does not disclose the actuator as being an hydraulic actuator or the control means for actuating the hydraulic actuator accessible to an operator standing on the platform.

Note actuator 29 of Stone and the control means referenced in column 1, lines 37-40 of Stone. Note that the actuator 7 of Stanescu is an hydraulic actuator.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to provide an actuator similar to 29 of Stone for actuator 56 of Schmid, Jr. It would further have been obvious to make this actuator a hydraulic actuator in view of Stanescu. It also would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains to provide a control means for actuating the hydraulic actuator accessible to an operator standing on the platform in view of what is taught in column 1, lines 37-40 of Stone.

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Motivation to make such changes to Schmid, Jr. is to provide a means to move the platform up and down with a motor so its doesn't have to be done manually. Further, using a hydraulic motor instead of an electric motor avoids the necessity of electrical lines running to the motor. Electrical lines can be dangerous around water.

Conclusion

4. Claim 3, which was indicated as being allowable in the first office action, is no longer allowable in view of the new grounds of rejection.

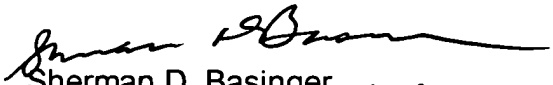
Cook is cited to show the retractable ladder. Houlder et al is cited to show the platform unit which is lowered by an actuator.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sherman D. Basinger whose telephone number is 703-308-1139. The examiner can normally be reached on M-F (6:00-2:30 ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel J. Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Sherman D. Basinger
Primary Examiner
Art Unit 3617
10/19/04

sdb

10/19/04